and rendered judgment in favor of the plaintiff. The judgment was assigned to C, who sought to enforce it in New York against the Association. *Held,* that the interpleader action was a proceeding *in personam,* that the New York court had acquired no jurisdiction over the representative of B's estate by publication of the summons in the original action, and that the plaintiff was entitled to judgment. *Hanna v. Stedman* (1921) 230 N. Y. 326, 130 N. E. 566.

Of the two conflicting judgments in the case the earlier one would control by virtue of the full faith and credit clause of the federal Constitution if the court had jurisdiction. Jurisdiction within the meaning of the constitutional provision exists if the action is one *in rem* and the res is within the state. In such a case service by publication upon a non-resident defendant is sufficient. Personal service or consent is required, however, if the action is *in personam. Pennoyer v. Neff* (1877) 95 U. S. 714. Whether an exception should be recognized with respect to citizens of the state or residents domiciled therein so as to authorize a personal judgment upon constructive service is not finally determined. See *McDonald v. Mabie* (1917) 243 U. S. 90, 37 Sup. Ct. 343. Differing from garnishment proceedings, a bill of interpleader does not seek to apply property to the payment of debts, but determines merely personal rights to a money demand. *N. Y. Life Ins. Co. v. Dunlevy* (1916) 241 U. S. 518, 36 Sup. Ct. 613; Huston, *The Enforcement of Decrees in Equity* (1915) 63-65. Interpleader is a proceeding *in personam,* even though the fund in dispute is placed in possession of the court. *Cross v. Armstrong* (1887) 44 Ohio St. 613, 10 N. E. 160. As the New York court had obtained no jurisdiction over the representative of B's estate, the judgment was not binding upon him. The Maryland judgment, on the other hand, was entitled to full faith and credit in New York because the Association had been served in Maryland and had appeared in the action. The decision emphasized the need of legislation giving to bills of interpleader *in rem* effect, so that a party seeking interpleader, who has paid the money into court or has delivered the res to the court, may be protected against suits in other jurisdictions by non-residents who have been served merely by publication. Under the existing law such party can protect himself against the contingency which happened here only by demanding a bond in indemnity from the successful party in the interpleader proceedings. See *Stevenson v. Anderson* (1814, Ch.) 2 Ves. & B. 407.

CONSTITUTIONAL LAW—FREEDOM OF SPEECH AND PRESS—CONVICTION FOR CRIMINAL ANARCHY.—The defendant was part owner and business manager of "The Revolutionary Age" and had knowledge of the publication therein of the "manifesto" of the "Left Wing" section of the Socialist party. The manifesto advocated as a "direct objective" the "conquest by the proletariat of the power of the state," and that this be accomplished by conquering and destroying "the bourgeois parliamentary state," the weapon to be the "political mass strike." The defendant was tried and convicted under authority of sections 160-161 of the New York Penal laws (Laws of 1902, ch. 371), making the advocacy of criminal anarchy a felony. *Held,* that the conviction should be affirmed. *People v. Gitlow* (1921, N. Y. App. Div.) 65 N. Y. L. J. 93.

The decision repudiates the test urged by many authorities, that only agitation creating a "clear and present danger" of criminal acts may be constitutionally subject to punishment. See *Shenck v. United States* (1919) 249 U. S. 47, 39 Sup. Ct. 247; dissenting opinion of Mr. Justice Holmes in *Abrams v. United States* (1919) 250 U. S. 616, 40 Sup. Ct. 17; see COMMENTS (1919) 29 YALE LAW JOURNAL, 337. The doctrine of "constructive intent" is applied by holding that since the mass strike cannot be employed without force, violence and bloodshed, the defendants must be presumed to intend the use of such means.

This doctrine has been the subject of harsh and able criticism. See Chafee, *Freedom of Speech* (1920) 54 ff; but see *contra,* Corwin, *Freedom of Speech and Press* (1920) 30 YALE LAW JOURNAL, 48. It is further held that the jury was warranted in finding that "unlawful means" were contemplated, and that, while the guilt of the accused could not be declared as a matter of law, the court could well instruct that the advocacy of these doctrines violated the statute. See *Horning v. District of Columbia* (1920) 41 Sup. Ct. 53; (1921) 30 YALE LAW JOURNAL, 421. The instant case illustrates forcibly how strong a hold the policy of strict repression has now obtained. For recent legislative action see NOTES (1920) 20 COL. L. REV. 700. The jury might very well have convicted even though the court had not been so vigorous in its application of the statute. One may share the court's aversion to the defendant's views and yet doubt the corrective effect and the social desirability of the means of repression adopted. If a similar policy is applied to that most difficult of present problems, industrial warfare, i. e. in connection with strikes which are not "mass strikes," the misunderstanding and hatreds likely to result seem distinctly undesirable. See COMMENTS (1920) 30 YALE LAW JOURNAL, 280.

CONTRACTS—ILLEGALITY—ARBITRATION AGREEMENTS.—The plaintiff charterers sued the defendant owners on a charter-party for damage to goods in shipment. The defendants pleaded that the charter-party provided that all disputes arising under it should be referred to arbitration and that a failure to present a claim and appoint an arbitrator within three months from the date of delivery would bar the claim. *Held,* that this clause was void as against public policy. *Dreyfus Co. v. Atlantic Shipping and Trading Co.* (1921, C. A.) 37 T. L. R. 417.

The early courts looked upon arbitration agreements in contracts with disfavor. *Thompson v. Charnock* (1799, K. B.) 8 T. R. 139. But where the contract made arbitration an express condition precedent to a right of action, the English courts have held that such an agreement does not oust the court of its jurisdiction, for no cause of action has arisen until the condition is fulfilled. *Scott v. Avery* (1856) 5 H. L. 811. Thus the distinction came to be drawn between agreements where arbitration was a condition precedent to an enforceable right, and those where it was merely agreed upon as a collateral term of the contract, operating to create a right but not a condition precedent. *Viney v. Bignold* (1887) L. R. 20 Q. B. Div. 172. Some courts construed the doctrine of *Scott v. Avery, supra,* to be applicable only to agreements providing for the arbitration of a dispute as to a particular fact, but after a period of confusion the law is now settled in England that agreements providing for the arbitration of all disputed facts are valid. *Trainor v. Phoenix Fire Ass. Co. Ltd.* (1892, Q. B.) 65 L. T. 825; *Woodall v. Pearl Ass. Co. Ltd.* [1919, C. A.] 1 K. B. 593. However, this confusion left its mark on the courts in this country, with the result that there are a few decisions which hold that a clause making arbitration of any possible dispute a condition precedent is void. *Whitney v. National Masonic Acc. Ass'n.* (1893) 52 Minn. 378, 54 N. W. 184. The weight of authority distinguishes, as in England, conditions precedent and collateral agreements to arbitrate, holding the former a valid bar to an action on the contract and the latter no bar at all. *Graham v. Ins. Co.* (1907) 75 Ohio St. 374, 79 N. E. 930; *Memphis Trust Co. v. Brown-Ketchum Iron Works* (1909, C. C. A. 6th) 166 Fed. 398. To constitute a valid bar the parties must make arbitration a condition precedent either expressly or by necessary implication in fact. *Mecartney v. Guardian Trust Co.* (1918) 274 Mo. 224, 202 S. W. 1131. In England a further recognition of the benefits of settling disputes by arbitration was made by statute giving courts the discretionary power of staying actions on contracts until the *collateral* arbitration agreement has been performed. (1889) 52 & 53 Vict.